



Office of the Attorney General
State of Texas

April 15, 1992

DAN MORALES
ATTORNEY GENERAL

Ms. Diana Granger
Acting City Attorney
City of Austin
Austin, Texas 78767-8828

OR92-152

Dear Ms. Granger:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 15445.

The City of Austin (the city) received three open records requests from the Austin American-Statesman for various records pertaining to an ordinance petition for an initiative election. You contend that the requested documents may be withheld from the public pursuant to sections 3(a)(3) and 3(a)(7) of the Open Records Act.

One of the open records requests seeks the following information:

- (1) The names of the two outside law firms hired by the city to conduct a legal review of the Save Our Springs Coalition's initiative.
- (2) The amount the city paid to hire these law firms.
- (3) A list of the services to be performed by these firms.
- (4) Copies of the contracts (if applicable) between the city and these two firms.

In response to this request, you have submitted two contracts in the form of letter agreements between the city and the outside law firms hired to provide legal

opinions on the Save Our Springs initiative. The city included as an attachment to each contract an outline of the legal issues to be addressed in the legal opinions. You state in your letter to this office that the city has released the names of the outside counsel to the requestor. Subsequent to your request for an open records decision, the city provided to the requestor the amounts it has paid those law firms for their services. We therefore will consider only whether items (3) and (4) listed above may be withheld pursuant to the exceptions you raise.

We note at the outset that section 6(3) expressly makes public "information in any account, voucher, or *contract* dealing with the receipt or expenditure of public or other funds by governmental bodies, not otherwise made confidential by law." (Emphasis added.) Although this provision of section 6 does not override the act's exceptions to required public disclosure listed in section 3(a), it does reflect the legislature's acknowledgment of the public interest in the expenditure of public funds. *See also Palacios v. Corbett*, 172 S.W. 777 (Tex. Civ. App.-- San Antonio 1915, writ ref'd) (citizens' common-law right to inspect county finance records).

With this in mind, we must determine whether the contracts and the outline of work to be performed may be withheld pursuant to the exceptions you raise. Section 3(a)(3) of the Open Records Act, known as the litigation exception, excepts from required public disclosure:

information relating to litigation of a civil or criminal nature and settlement negotiations, to which the state or a political subdivision is, or may be, a party, or to which an officer or employee of the state or political subdivision, as a consequence of his office or employment, is or may be a party, that the attorney general or the respective attorneys of the various political subdivisions has determined should be withheld from public inspection.

You contend that section 3(a)(3) excepts the contracts from required disclosure because they constitute "information relating to litigation" to which the city is party, namely *Save Our Springs, et. al. v. City Council of Austin, Texas, et.al.*, No. 92-03635 (Dist. Ct. of Travis County, 98th Judicial Dist. of Texas, March 17, 1992). After reviewing the plaintiffs' initial pleading in this lawsuit, this office believes that, although the information contained in the contracts does tangentially "relate" to the lawsuit, the contracts themselves do not directly relate to the legal issues raised by the lawsuit. The contracts may not be withheld pursuant to section 3(a)(3).

You also claim that the attorney-client privilege, as incorporated into section 3(a)(7) of the act, protects this information. In instances where an attorney represents a governmental entity, the attorney-client privilege protects only an attorney's written legal opinion or advice and privileged attorney-client communications. Open Records Decision No. 574 (1990). After reviewing the contracts, we conclude that they do not consist of legal advice or opinion, or client confidences. The contracts merely outline in general terms the attorneys' responsibilities to provide a legal opinion regarding the Save Our Springs initiative petition and the legal fees that the city agrees to pay. This information is not a governmental entity's privileged communication to its attorney for purposes of section 3(a)(7) of the Open Records Act. Accordingly, the city must release the contracts to the requestor.

In contrast, the attachments outlining the issues to be addressed in the legal opinions specifies the city's legal concerns about the initiative petition in detail. We believe that the outline attached to each contract constitutes a privileged communication between the city and its attorneys. The city may therefore withhold the entire outline pursuant to section 3(a)(7).

The two remaining open records requests seek the following documents:

- (1) A copy of the memorandum provided by the city attorney to members of the Austin City Council in an executive session to discuss the Save Our Springs Coalition's initiative on Thursday, March 12, 1992;
- (2) A copy of all other memoranda from the city attorney's office concerning the legality of the Save Our Springs Coalition's initiative;
- (3) A copy of the eight paragraphs concerning the Save Our Spring Coalition's initiative that outline what council members can say to members of the public to avoid litigation; and
- (4) A copy of the legal opinions written and offered by the two outside counsel concerning the Save Our Springs Coalition's initiative.

As responsive to these requests, you have submitted to us two legal memoranda from the city attorney's office, the statements prepared by the city

attorney for city councilmembers, and the two legal opinions prepared by outside counsel concerning the petition ordinance. Each of these documents constitute the legal opinion or advice of an attorney to his client; accordingly, these documents may be withheld in their entirety pursuant to the attorney-client privilege as incorporated into section 3(a)(7).

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR92-152.

Yours very truly,



Susan Garrison
Assistant Attorney General
Opinion Committee

SG/RWP/lmm

Ref.: ID# 15445

Enclosures: Submitted documents

cc: Bob Burns
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(w/o enclosures)